FOR ARGUMENT

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF FOR PETITIONER

HOFFBERG, GORDON, RABIN & ENGLER
Attorneys for Petitioner
32 East 57th Street
New York, New York 10022
(212) 355-2650

Of Counsel:
MYRON P. GORDON
MONTE ENGLER

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • (212) 391-6622

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977
No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner

- against -

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF FOR PETITIONER

The brief of the United States in this case proceeds upon the basis of certain contentions which are of questionable validity. Petitioner respectfully submits this brief in reply to two of these contentions which we believe merit brief

comment.

I.

The first contention with which we must take exception is the claim, consistently made by Respondent throughout this proceeding, that in order to receive the business league exemption, an organization must be of the same general class as a chamber of commerce or a board of trade. (Resp. 18, passim).[1] Despite the fact that such language appears in the second sentence of the governing regulation, a fact discussed briefly below, we submit that the limitation is not justified by either the statutory language, the "legislative history" or the judicial precedents relied upon by Respondent in its brief.

We suggest that a business league is nothing more and nothing less than

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1. Resp. 18 - Respondent's Brief, page 18

its plain words suggest and we believe that that meaning is captured in the first sentence of the regulation: "A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit". (As quoted at Pet. 3)[2] It is undisputed that Petitioner meets each one of these requirements and, indeed, we suggest that Petitioner's activities constitute virtually a textbook example of adherence to a regulatory definition.

The statute grants the exemption to "business leagues" as well as other specified organizations. It does not grant it to "business leagues which are of the same general class as a chamber of commerce or board of trade," nor is there any other

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2. Pet. 3 - Petitioner's Brief, page 3

limiting language. That limitation, moreover, is even more difficult to justify in view of the inclusion within the statute of "football leagues", which are hardly of the same general character as chambers of commerce or boards of trade and hardly benefit a broad sector of the business community. Although the meaning of a word may some times be determined by the meaning of other words with which it is associated (noscitur a sociis), the resort to such a maxim is not justified in this case as the term "business league" contained in the statute is quite simple and properly defined in the regulation's first sentence.

Nor is Respondent aided by the "legislative history" upon which it relies to demonstrate the limitation. (Resp. 16-17) The language quoted by Respondent in support of its position comes not from the mouth of any legislator but rather from the United States Chamber of Commerce, hardly an un-

interested party in having a tax exemption granted to commercial organizations. We suggest that self-serving statements by trade organizations glorifying their contributions to the public welfare are not a substitute for statements by the lawmakers and that this type of "legislative history" offers Respondent little support.

While it is true that the "same general class" and line of business" language does appear in the governing regulation, Respondent's own discussion of the judicial precedent for the inclusion of such language (Resp. 21) states that the amendment which incorporated that language was added in 1929, sixteen years after passage of the statutory exemption, and indicates that the amendment went much further than warranted. The brief states that the language was added "as a result" of a Board of Tax Appeals decision denying the business league exemption to a "... corporation organized by associations

of insurance companies to provide printing services for their member companies..." Resp. 21).

That decision held only that an exemption will not be granted to a trade association which does no more than assist its members to do more expeditiously or economically that which they could accomplish themselves. This is consistent with the position which Petitioner has maintained throughout this proceeding, - that the exemption was created to permit businessmen to join together to accomplish valid business goals which they could not accomplish by themselves. (Pet. 14-16). It is a long step from denying the exemption to an association which merely provides services to its members more economically, to a rule which would require an exempt association to be of the same general class as a chamber of commerce or a board of trade and there was absolutely no justification for taking that

long step.

II.

The second contention with which we must take specific exception is Respondent's seeming assertion that the exemption must be denied because Petitioner worked with the franchisor to assist in the strengthing of Midas as a factor in the muffler industry.[3] (Resp. 31-32). This seems to be nothing more than a reversion of the United States to its initial position that the exemption ought to be denied because Petitioner is an arm of the Midas organization. (See Joint Appendix A-165). Nothing could be further from the truth.

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3. Respondent goes even further in its comments about the Pepsi Cola Bottlers Association, Amicus Curiae herein, asserting that that association is financed by its members' franchisor. (Resp. 34). That characterization has no basis on the record or in fact. The purposes and financing of that association are described at pp. 4-6 of the Amicus' brief herein and reflect membership financing similar to that of Petitioner.

Certainly it is true that the goals of franchisor and franchisee will often coincide, but that in no way mitigates against Petitioner's primary raison d'etre, - the redress of the traditional economic imbalance between franchisor and franchisee. This mutuality of interest is not unlike the interest shared by a labor union in the success of its members' employer(s). The success of the employer is greatly determinative of the success or failure of the employees and we are certain the Respondent would not argue that this fact in any manner threatens its statutory exemption. Such an argument directed at a franchisee association is entitled to no more weight than if directed at a labor union.

CONCLUSION

The requested exemption is proper and Respondent's brief offers no

valid reason for its denial.

Respectfully submitted,

HOFFBERG, GORDON, RABIN
& ENGLER
Attorneys for Petitioner
32 East 57th Street
New York, New York 10022
(212) 355-2650

Of Counsel:

MYRON P. GORDON
MONTE ENGLER